



April 23, 1999

Ms. Linda Wiegman  
Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR99-1090

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125610.

The Texas Department of Health (the "department") received a request for information concerning certain complaints and actions taken against a particular massage therapist. You assert that portions of the requested information are made confidential by the common-law right to privacy and therefore are excepted from required public disclosure under section 552.101 of the Government Code. You have submitted the requested information to this office for review.

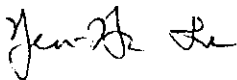
The department states, and we agree, that it has not sought an open records decision from this office within the statutory ten-day deadline. *See* Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 of the Government Code also applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate

or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* We agree that the information you have marked is protected from disclosure under the common-law right to privacy.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 125610

Encl: Submitted documents

cc: Ms. Lan Li  
606 North Presa, #504  
San Antonio, Texas 78205  
(w/o enclosures)